

# „If We Embark On A Global Constitutional Process We Will Fail“

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Maximilian Steinbeis Di 14 Aug 2012

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*National parliamentary democracy is in peril as a result of the Euro crisis, therefore we need to constitutionalize the EU / the Eurozone as a parliamentary democracy of its own right. This view, most prominently articulated by [Jürgen Habermas](#), is shared by many in Germany (including me). But what about other countries, maybe with even deeper democratic roots than us? Is the need to save democracy and to constitutionalize Europe also felt in, say, France? If not, how can we hope to strive for a political union in Europe – a union which maybe nobody but us wants to join?*

*I have called [Guy Carcassonne](#), professor of constitutional law at the University of Paris X-Nanterre and one of the most prominent experts of the country, to find out.*

*MS: Last week, the Conseil Constitutionnel handed down its decision about the constitutionality of the Fiscal Compact. What are the most important findings of the court?*

GC: The most important point on a political ground, obviously, is that there is no necessity to amend the constitution. Which is no surprise. The treaty is rather flexible when you read it properly. It does offer two possibilities to implement it, either on a constitutional or a non-constitutional basis. Given that there are two possibilities and one without amending the constitution, which is politically far easier, it doesn't come as a surprise that it be the second one that will be chosen.

*MS: Does that mean that there won't be any constitutional or equivalent constraint for the French budgetary legislator?*

GC: Of course not. Even in the second alternative there will necessarily be a permanent constraint. Parliament will be bound by a so called „loi organique“, a law superior to ordinary statutes, derived from the constitution but not part of it.

*MS: But the government could change that law to get rid of that constraint, couldn't it?*

GC: Naturally it is easier to change a loi organique than the constitution. But that difference is not that important, I think. It's more symbolic, I should say, rather than efficient on a legal ground. A new government that would change the loi organique would be exactly in the same situation than a government that would denounce the treaty. Nothing less. Any change in the loi organique must be submitted to the Conseil Constitutionnel first. And the Conseil Constitutionnel then, if the change would be contrary to the treaty, would probably say no, because treaties have a value superior to laws according to the constitution itself. France is totally committed to respect the treaty. And the conseil insisted on that point.

*MS: Doesn't the superiority of international treaty depend on the compliance of other participants, according to Art. 55 of the Constitution?*

GC: No. The reciprocity clause doesn't apply to multilateral treaties, only to bilateral ones. It wouldn't make much sense for a Human Rights treaty to say if you don't respect it we won't either, would it? The same goes here.

*MS: Generally, the treaties have stirred a tremendous lot of unrest in Germany. Many fear for democracy itself. Not so in France, apparently. Why is that?*

GC: The explanation is quite simple: German people are far more serious than French people (*laughs*). They are far

more into principles, whereas in French politics they struggle about symbols. As to parliamentary democracy, the French parliament is not as prominent as the German one. People here are much accustomed to parliament being quite obedient to the executive power, and so, if the parliament loses some ability or another, it's not a trauma. Most of the budget is run by the government, anyway.

*MS: Are you saying that the French people, the first to cast the „volonté générale“ into constitutional form, is totally indifferent to the idea that their elected representatives might cede control over their budget to a supranational level? Quite frankly, I find that hard to believe.*

GC: If I may speculate, I would say that what has been called the Golden Rule is not that unpopular in France. People have understood that it is very nice to refer to political will, but this alleged political will has put us in a very bad situation. So, even though we historically cherish political will many French people feel that they have excellent reasons to be a bit reluctant about the decisions made by their elected leaders. Therefore, having rules that comply the whole political system to more seriousness is not necessarily rejected. Contrarily to what is generally thought, French people are rather pragmatic. Many people feel that in a rather confused way, but they feel the fact that there are rules that may be severe but have chances to be efficient in order to fix the situation is rather welcome, even if the price to pay is to deprive a parliament of symbolic powers.

*MS: What about the side of the coin, the European Stability Mechanism? Many in Germany are deeply concerned by the perspective that their national wealth will be put at risk in order to save less fortunate countries.*

GC: They have quite good reasons to feel that way. But French people do not have those reasons. People in France are not aware of how many trillions saving Greece or Spain or Italy may cost them eventually. They don't really feel concerned by that. For obvious reasons.

*MS: But isn't this more than just who pays for what, as well? Doesn't that have deep constitutional implications for the French people, too?*

GC: People understand that if we act properly and do what is necessary in order to have a strong economy and a right budget we will have nothing to fear from anyone. Therefore, if we have to suffer decisions made by others, it would mean that we haven't made our job. But if we do our duty we will be the masters of our own decisions. It is a question of, if I may say so, behaviour. If you behave adequately, there won't be any problem. If not, it's quite normal that there will be problems.

*MS: Doesn't the fact that France is a presidential system also play a role?*

GC: I'm not really sure. Parliamentary elections in France are as important as presidential ones. We both choose our leaders, you once, we twice. The problem is that of Europe since its creation: There is no equivalent to parliamentary democracy on the European level. I have a lot of respect for the European Parliament, it's directly elected and all, but on an absurd basis, with national constituencies, national parties. It doesn't really make sense, and people don't feel properly represented by it. This has been a problem for over 50 years now, and it is still in front of us.

*MS: And the EP doesn't have much to say in the Stability mechanism.*

GC: Naturally. Given that it is not considered a real parliament despite all the efforts of its members, it would not make much sense to give it a role. It would not safeguard anything.

*MS: Do you share the fear that Europe might evolve into some sort of executive dictatorship?*

GC: Indisputably, many decisions are made in Brussels by anonymous civil servants. This is a key point in France. Deeply, the French people do not really believe, or fear, that any kind of executive dictatorship could exist. They don't feel that their leaders are deprived of their power. They are in power, they have the responsibilities. And if they face

problems, they have to solve them. That's it. I think executive dictatorship is more a fantasy than a real threat. People would simply not accept any kind of executive dictatorship on whichever level. And I hope that the European leaders understand that. They would make Europe unbearable. The consequence would be the breakdown of the European construction.

*MS: In Germany, many think that the only way to avoid disintegration and/or democratic decline is a bold step forward towards a proper Political Union, with a proper parliament. Do you agree?*

GC: I totally agree with that. The most important outcome will be that integration will gain ground. It has to.

*MS: Is that view widely shared in France?*

GC: For the time being people are not really fully aware today, but many voices explain that. And people understand that. We can't go on with a Europe directed by civil servants without political strength.

*MS: Is the way to get there to call for a constitutional convention, to build a new core Europe from the ground? And is it conceivable that France will join such a project?*

GC: I think personally that this is not the best way to do it. I fear all the symbolic mess that would be created by a new constitutional process. I think it would be far wiser to proceed as Europe had proceeded since its beginning, by taking some very simple pragmatic decisions on key issues.

*MS: Such as?*

GC: I have always considered a reform of the elections to the European Parliament as something perfectly feasible. It answers to the interests of all the member states, all the governments, and it would change everything. My idea is quite simple: I think that it would be rather easy to agree on electing deputies in constituencies which would be necessarily transnational. It would be quite easy to draw boundaries in Europe for, let's say, a dozen or fifteen constituencies, no country voting for itself. And then, instantly, everything would change. Today, so far, European elections are terrible for all governments. People elect their members to the European Parliament on a national basis, whether the government is popular or not, a test of their popularity. In the system such as I describe it, this would necessarily disappear. If you vote for a list on which there are German, English, Dutch, French people it would stop to be a popularity test, it would become a political contest between right, left, greens, extremes, moderates, you name it. This would be quite simple. And in doing so we would have a real European parliament.

*MS: But we would still have no parliamentary responsibility of the executive power, would we?*

GC: This would come instantly afterwards. In all countries political responsibility came after installing a parliament.

*MS: How would that happen?*

GC: Don't ask me what will happen. There are many scenarios, but all of them go in the same direction: You would have a European government. But the first step is to have a proper parliament.

*MS: This would still mean to stay in the framework of the large European Union with its 27 member states.*

GC: Yes, but they have no reasons not to accept it. My point is, if we embark on a global constitutional process it will fail, unfortunately but certainly. That's what I fear.

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